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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2018) 353 final
Subject:	Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment (Regulation on Sustainable Finance - taxonomy) - Revised mandate for negotiations with the European Parliament

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1. In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth', setting up an ambitious and comprehensive action plan strategy on sustainable finance. One of the main objectives of that action plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.
2. In this context, on 24 May 2018, the Commission submitted to the Council a package of legislative proposals:
  - Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, also referred to as "Taxonomy Regulation";

- Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341, also referred to as "Disclosure Regulation"; and
  - Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks, also referred to as "Benchmarks Regulation".
3. Disclosure and Benchmarks Regulations were adopted this year and published in the Official Journal of the European Union as Regulations (EU) 2019/2088<sup>1</sup> and (EU) 2019/2089<sup>2</sup>, respectively.
  4. On 28 March 2019, the European Parliament adopted a legislative resolution with its position at first reading concerning the Taxonomy Regulation<sup>3</sup>. On 25 September 2019, COREPER agreed the negotiating mandate with regard to the proposed Regulation<sup>4</sup>. Since agreement of the mandate by COREPER, six trilogues have taken place.
  5. At the 3 and 5 December 2019 trilogues, the Finnish Presidency and the European Parliament reached an understanding on the key issues in the Taxonomy Regulation, subject to the revision of the negotiating mandate by COREPER and without prejudice to the technical finalisation of the legal text as a whole at a later stage.
  6. On 11 December 2019, COREPER considered the key elements of the understanding on the basis of a Presidency note set out in document 14880/19. COREPER called for continuation of work on two elements of the mandate regarding climate neutrality.

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<sup>1</sup> OJ L 317, 9.12.2019, p. 1.

<sup>2</sup> OJ L 317, 9.12.2019, p. 17.

<sup>3</sup> Doc. 7759/19.

<sup>4</sup> Doc. 12360/2/19 REV 2.

7. Taking into account the feedback from the Member States on the possible drafting of Recital (24a) and paragraph 1a of Article 6 as well as article 12 (d), the Presidency proposes the following drafting to accommodate the Member States concerns regarding the assessment by the Commission of climate neutral and other existing technologies, the principle regarding long term disposal of waste under ‘do no significant harm’, while ensuring the possibility to secure the agreement with the European Parliament.
8. The Presidency compromise resulting from that work provides for the following changes to recital 24a, Article 6(1a) and Article 12(1)(d):

#### **ELEMENT 1**

**Line 64 (recital 24a) - add specific reference to Article 6(1a) proposed change  
bolded and underlined:**

*"(24a) In defining the technical screening criteria for the climate change mitigation objective, the Commission should take into account and incentivize the ongoing and necessary transition towards a climate-neutral economy. The transition, in addition to the use of climate neutral energy **in accordance with Article 6(1a)** and more investments in economic activities and sectors that are already low carbon, requires substantial reductions in greenhouse gas emissions in other economic activities and sectors for which there are no technologically and economically feasible low carbon alternatives. Those economic activities should be considered to substantially contribute to climate change mitigation if their greenhouse gas emissions are substantially lower than sector or industry average, they do not hamper the development and deployment of low-carbon alternatives and they do not lead to a lock-in in assets incompatible with the objective of climate-neutrality, considering the economic lifetime of those assets. The technical screening criteria for these activities should ensure that these transitional activities have a credible path towards climate neutrality, and these technical screening criteria should be adjusted accordingly at regular intervals."*

**Line 196 (Article 6(1a) 1<sup>st</sup> sub-paragraph) - text remains unchanged:**

"1a. For the purposes of paragraph 1, an economic activity for which there is no technologically and economically feasible low carbon alternative, shall be considered to contribute substantially to climate change mitigation as it supports the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels including by phasing out greenhouse gas emissions, in particular from solid fossil fuels, where that activity:"

**Line 196d (Article 6(1a) 2<sup>nd</sup> sub-paragraph) – proposed change bolded and underlined:**

*For the purpose of this paragraph and the establishment of technical screening criteria in accordance of Article 14, the Commission shall assess the potential contribution and feasibility of all relevant existing technologies.*

**ELEMENT 2**

**Line 300 (Article 12(1)(d)): proposed change bolded and underlined:**

"(d) circular economy, including waste prevention and recycling, where that activity leads to significant inefficiencies in the use of materials and the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land in one or more stages of the life-cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products; or where that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of incineration of non-recyclable hazardous waste, or ~~in particular~~ where the long term disposal of waste may ~~pose~~ cause material significant and long-term risks of causing significant and long-term harm to the environment."

**Line 311-312 (Article 14(1(a) and (b)) remains unchanged:**

"a. identify the most relevant potential contributions to the given environmental objective, while respecting the principle of technological neutrality, considering both the short and long term impacts of a given economic activity;"

*"b. specify the minimum requirements that need to be met to avoid significant harm to all relevant environmental objectives, considering both the short and long term impacts of a given economic activity;"*

9. The Committee of Permanent Representatives is invited to:

- approve a revised mandate for negotiations with regard to the Taxonomy Regulation with the European Parliament in line with the understanding set out in document 14880/19, as adapted by the changes provided for in point 7 of this note and without prejudice to the technical finalisation of the legal text as a whole at a later stage; and
- invite the Presidency to conclude as soon as possible the negotiations with the European Parliament on the basis of this revised mandate with a view to reaching an agreement in the form of a (pre-negotiated) Council position at first reading<sup>5</sup>.

10. Unless objected by COREPER, this document will be made public by the General Secretariat of the Council after endorsement.

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<sup>5</sup> Often referred to as an 'early second-reading agreement'.